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JOHN WELLS KING  
ADMITTED IN VA AND DC

June 28, 1996

William F. Caton, Acting Secretary  
Federal Communications Commission  
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: MM Docket No. 96-16  
Streamlining Broadcast EEO Rule and Policies  
Subject: COMMENTS OF  
NEBRASKA RURAL RADIO ASSOCIATION

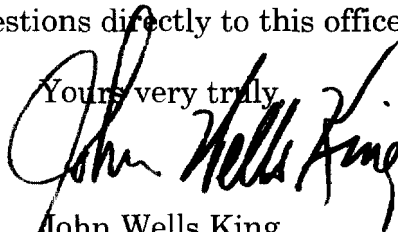
Dear Mr. Caton:

On behalf of Nebraska Rural Radio Association I transmit herewith pursuant to Section 1.415 of the Commission's Rules its Comments in the above-referenced proceeding.

As provided by Section 1.419(b) of the Rules, an original and nine copies are transmitted herewith, to be distributed among your office (original plus one), the Mass Media Bureau (2), and the Information office (1), and an additional copy to be provided to each Commissioner.

Kindly communicate any questions directly to this office.

Yours very truly,

  
John Wells King

JWK/jb  
Enclosures

J+9

Before The  
**Federal Communications Commission**

Washington, D.C. 20554

In The Matter Of )  
 )  
Streamlining Broadcast EEO )  
Rule and Policies, Vacating the EEO )  
Forfeiture Policy Statement )  
and Amending Section 1.80 of )  
the Commission's Rules To Include )  
EEO Forfeiture Guidelines )

MM Docket No. 96-16

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TO: The Commission

## Comments of Nebraska Rural Radio Association

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## Comments of Nebraska Rural Radio Association

### Summary

Nebraska Rural Radio Association (NRRA) owns and operates AM/FM combinations in Lexington and Scottsbluff, Nebraska, which serve farmers and ranchers throughout a five-state area. The stations employ a relatively large number of persons for stations in markets their size, because of the news and events-oriented nature of their broadcast service.

Current EEO recordkeeping requirements are a burden on small market stations, where employee turnover is low and the minority labor force population is small. NRRA urges the Commission to relax recordkeeping requirements in the following ways:

1. *Exempt stations in the smallest markets.* Absolute population, not percentage of population, is a more realistic

reflection of minority recruitment. Market rank reflects population – 10 percent of 10,000 is a drastically smaller minority labor pool than 5 percent of 2,000,000. The Commission should recognize this by exempting stations in the smallest markets from recordkeeping requirements.

2. *Permit stations flexibility in defining their labor force.* Rigid use of MSA or county statistics paints an unrealistic picture of the true reach of many broadcasters' recruitment areas. The Commission should give stations the option to report by service area, community, MSA, county, or some other reasonable means.

3. *Consider the character of a labor force in analyzing true recruitment potential.* Minorities classified as operatives, laborers, and service workers do not represent a realistic source of employment for the small market broadcaster with limited training resources.

4. *Reward stations that have stable staffs.* A station with low turnover is not in the business of hiring people, and does not maintain an active applicant pool. The Commission should take staff stability into account in relaxing requirements.

5. *Recognize program diversity as a measure of a station's EEO performance.* The overriding goal of EEO is program diversity. Without evaluating it in some fashion, the success of the Commission's EEO rules cannot be assessed.

The Commission's examination of its EEO rules is timely and salutary. Appropriate modifications are warranted to relieve small market broadcasters of burdensome recordkeeping requirements.

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TO: The Commission

## Comments of Nebraska Rural Radio Association

By Order and Notice of Proposed Rule Making adopted February 8, 1996, and released February 16, 1996 (FCC 96-49) ("O&NPRM"), the Commission, *inter alia*, invited comment upon proposed improvements and clarifications to its equal employment opportunity ("EEO") requirements. Nebraska Rural Radio Association ("NRRA"), by its counsel and pursuant to Section 1.415 of the Commission's Rules, is pleased to respond to the Commission's invitation, and herewith offers the following comments upon the Commission's proposals.

### Introduction

NRRA is the licensee of Broadcast Stations KRVN and KRVN-FM at Lexington, Nebraska. It is also the parent of Panhandle Broadcasting, Inc., licensee of Broadcast Stations KNEB and KNEB-FM at Scottsbluff, Nebraska.

NRRA is unique among broadcast licensees in the United States: it is a membership organization owned by 4,381 Nebraska farmers and ranchers. KRVN commenced operation in 1951 under its charter as “an agricultural organization, organized and operated exclusively for educational purposes and for the promotion of social and economic welfare in rural areas.” KRVN, which operates on 880 kHz with 50 kW full-time, serves farmers and ranchers in most of Nebraska’s 93 counties. The station provides a dependable secondary (0.5 mV/m) signal throughout much of the State of Kansas, and to portions of eastern Colorado and southwestern Iowa.

KRVN’s community of license, Lexington, Nebraska, is an agricultural community with a population of 8,600. Dawson County, of which Lexington is the county seat, has a population of 19,940. NRRA selected Lexington as its community of license because of its central location in the state, and consequent ability to serve as many farmers and ranchers as possible.

NRRA acquired KNEB in 1984. KNEB is a regional AM station that operates on 960 kHz with 1 kW full-time, throughout a seven-county area of the Nebraska Panhandle. KNEB’s program service mirrors KRVN’s, providing farmers and ranchers with specialized programming.

KNEB’s community of license, Scottsbluff, Nebraska, is principally an agricultural community with a population of 14,000. It is the county seat of Scotts Bluff County, which has a population of 36,025.

NRRA supports and subscribes to the principle of nondiscrimination in employment, and has carried out its obligations in the course of operating KRVN with a staff of 40 full-time employees and KNEB with a staff of 13 full-time employees.<sup>1</sup> As a small market operator, however, NRRA believes that the Commission's EEO rules have become unduly burdensome. NRRA welcomes this opportunity to express its views and to provide the insights of its experiences.

## How The Commission Should Provide Relief

### *Exempt Stations In The Smallest Markets*

NRRA strongly urges the Commission to consider market size as a qualifying factor for relief. In NRRA's case it is not a question of "competing for employees with stations in larger markets." O&NPRM at ¶ 21.b. Located in Lexington, Nebraska, 165 miles west of Lincoln (market 172) and 320 miles east of Denver (market 23), KRVN is not in a position either to compete with larger market stations for personnel, or even to attract minority applicants from larger markets. KNEB is in no better position in Scottsbluff, which is 385 miles west of Lincoln and 230 miles east of Denver.

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<sup>1</sup> KRVN-FM and KNEB-FM each employ fewer than five full-time employees, and are therefore exempt from the requirement to adopt a formal EEO program. NRRA's comments are thus based on its experiences with the staffs of KRVN and KNEB.

In sparsely populated markets such as these, the minority labor force population is correspondingly small. Evaluation of employment practices strictly under population percentage bears little relationship to reality in these markets. Thus, an analysis of absolute numbers of minorities in the labor force provides compelling evidence of the desirability of exempting small market broadcasters.

At KRVN, for example, Dawson County's 4.7% minority labor force amounts to only 536 persons. A five percent minority labor force in a market of one million persons – or even one-half million – may suggest a population sufficient in size from which to build a meaningful applicant pool, but in NRRA's case regulation by such numbers is an unrealistic exercise.

In point of fact, KRVN recruits from a seven-county area comprising about 9,000 square miles, an area roughly the size of the State of Maryland. However, Maryland's population approaches five million; KRVN's seven-county population is less than 117,000 – about two percent of Maryland's. Assuming a uniform labor force level throughout its recruitment area, KRVN's available labor force population is about 67,000. Assuming a uniform minority presence of 4.7 percent, the total minority labor force population is about 3,100. The same assumptions applied to Maryland's population yields a labor force of 2.85 million and a minority labor force of 131,600.

Thus, reference to absolute population data, not percentages, provides a more meaningful basis for relieving broadcasters of current



recordkeeping burdens. While the Commission may wish to consider setting a threshold minimum minority labor force size for recordkeeping, NRRA suggests that the simpler solution is to premise an exemption on station market rank. Market rank reflects generally the market size in terms of total population and labor force, and is a quick and convenient reference point.

NRRA submits that stations in the smallest markets – at a minimum, stations not located in any ranked market – should be exempted from recordkeeping. Based upon the record compiled in this proceeding, the Commission may choose to set such an exemption at a different level, perhaps for stations located in markets below 200. In any event, the case for relief is compelling for stations such as KRVN and KNEB, in unranked markets.

### *Permit Licensees To Define The Relevant Labor Force*

Although the use of MSA and county labor force statistics may be administratively convenient for the Commission, such a “cookie cutter” approach to analysis of a station’s employment practices distorts reality.

Neither KRVN nor KNEB is located in an MSA. Nor is their broadcast service or recruitment limited solely to the counties in which they are located. As a result, KRVN’s and KNEB’s labor force areas consist not only of their home counties, but the surrounding counties as well. NRRA submits that this criterion – a station’s “effective labor force” area – is a more realistic reflection of its relevant labor force than MSA or

county information. The broadcaster and the Commission should be guided by this approach.

Statistics for the KNEB market provide a good example:

<i>Area</i>	<i>Labor Force Population</i>	<i>Minority Labor Force Population</i>	<i>Minority Labor Force Percentage</i>
Scotts Bluff County	18,333	3,634	19.8
Seven-County Area	35,804	4,796	13.4

Note that although the minority labor force percentage in KNEB's effective labor force area is less than that for its home county by more than six percentage points, the minority labor force population is greater by more than 1,000 persons. The practical wisdom of reliance on absolute population figures rather than population percentage, as discussed above, is evident in this example.

NRRA recognizes, however, that rote application of a service area-related concept to establish an "effective labor force" may not be the *sine qua non* for all broadcasters. NRRA suggests that the Commission permit the licensee to elect the relevant criterion under which its EEO program is to be evaluated – service area-related, MSA, county labor force data, or some other rational labor force index. FCC Form 396-A, the Commission's Model Program Report, could be modified to include such an election, and could require the licensee to provide a brief statement of the basis for its determination of relevant labor force data. Accompanying the election would be the applicant's tabulation of population and labor

force statistics, according to the election made, against which its performance would be evaluated.

An elective labor force determination would be a more realistic approach to analysis of individual licensee performance than the rigid application of MSA or county statistics. It also would remove the virtual ban on the use of alternative labor force statistics that is currently imposed. In NRRA's case, the three circumstances under current policy in which a licensee may attempt to persuade the Commission to depart from MSA or county data (see O&NPRM at ¶ 35) are simply not relevant to its rural, small market operation. Whether the distance to significant minority populations is great, or commuting from the areas is difficult, or recruitment in an MSA has been fruitless, are circumstances that may be applicable to a larger market or suburban station, but not to KRVN or KNEB.

The better method of realistically assessing a licensee's employment practices is through a process that recognizes the wide variety of market conditions in which the nation's 13,000 broadcast stations operate that are subject to the Commission's EEO rules. To permit each station to elect labor force data most relevant to its operation would facilitate that process.

### *Consider the Character of the Minority Labor Force*

NRRA has shown that minority labor force population, not percentage, is a more rational criterion for affording relief from present

EEO requirements. Yet size alone is not a sufficient analytical factor. NRRA believes that the character of the labor force must also be examined.

Labor statistics for Dawson and Scotts Bluff Counties offer a tangible example. At KRVN in Dawson County, the 1990 census reports a total minority labor force of 4.7 percent. Although this is less than the five percent threshold for Commission review of affirmative action efforts, there is every reason to believe that the Dawson County minority labor force will continue to grow, due to particular economic circumstances in the area, as shown below.

The largest minority group in the county's labor force, 2.8 percent, is Hispanic.<sup>2</sup> This reflects the fact that Lexington's major employer is a beef slaughter plant that opened in 1990. It recruits immigrant laborers primarily of Hispanic origin to work on the kill floor and in other beef processing operations. It is hard manual labor, with an annual turnover rate of about 40 percent.

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<sup>2</sup> The breakdown is:

Asian:	0.3%	Hispanic:	2.8%
Black:	0.0%	Other:	1.3%
Am. Indian:	0.3%		

The census also notes:

"For this table only, persons of Hispanic origin are also counted in the five race categories. Since 'minority' is the sum of non-white races and Hispanic origin, persons who identified themselves in the 1990 Census as both non-white and Hispanic are double counted in this table. Therefore, in most instances the true number of minority persons is slightly less than indicated."

The continuing success and growth of the plant may translate into a sustained influx of Hispanic laborers over the next several years. The hiring of an additional 100 laborers at the plant would raise the minority labor force to 5.5 percent.<sup>3</sup>

Many of the slaughterhouse workers lack the basic English language skills and basic education level to be considered as realistic candidates for a broadcaster applicant pool. They are an attractive source of labor to the beef processor because of their willingness to come to Lexington and perform manual labor for a comparatively low wage.

The Commission's perception of minority labor force size as a monolithic source of employment would require NRRA to recruit this population. NRRA does not have the resources to educate the minority labor force to high school equivalency, to teach the English language, to persuade persons in that labor force to enter broadcasting, and to train them in basic broadcasting skills.

A similar situation exists at KNEB in Scotts Bluff County. The 1990 census reports a total minority labor force of 19.8 percent, of which the largest single minority group is Hispanic, 12.2 percent. Although there is no predominant employer of the Hispanic labor force as there is with the slaughterhouse in Dawson County, the Hispanic population is

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<sup>3</sup> Indeed, recent estimates for Dawson County suggest such growth: February 1993 population is estimated to be 22,500, with a minority population of 2,600, or 11.5 percent.

principally a blue collar and farm labor force that came to settle in Scottsbluff as railroad employees or migrant farm workers at sugar beet harvest time.<sup>4</sup>

Accordingly, NRRA suggests that the Commission consider the character of a labor force by looking to census data as broken down into Form 395 job categories. The majority of Hispanics in the Dawson and Scotts Bluff County labor forces are categorized as operatives, laborers, and service workers. For KNEB to recruit qualified candidates from among the dominant minority group for a “top-four” job position, statistics by Form 395 categories reflect a relevant labor force of 385 persons, or only 2.1 percent of the total 18,333-person labor force.

Recognition of the realistic potential of a labor force population for broadcast employment by reliance upon Form 395 job category data is a sensible and real-world approach, in considering minority labor force size.

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<sup>4</sup> Here is the breakdown of the Hispanic labor force in Scotts Bluff County by job category:

Officials/Managers	96	Craft Workers	237
Professionals	121	Operatives	451
Technicians	62	Laborers	352
Sales Workers	106	Service Workers	422
Clerical/Office Workers	232	No Category	28

### *Reward Staff Stability*

NRRA questions whether staff size alone should be a qualifying factor for relief from EEO recordkeeping. Staff size is not uniformly proportionate to market size. Even in large markets with a significant minority labor force, some stations have small staffs; some have fewer than five full-time employees. In small markets with a small minority labor force, such as Lexington, Nebraska, some stations have large staffs. such as KRVN with 40 full-time employees.

NRRA believes that staff stability should be a qualifying factor for relief, more than a simple numbers test of staff size.

In the Commission's references to an "adequate pool" of minority and female applicants, the 1994 Policy Statement and the proposed EEO forfeiture guidelines (O&NPRM at ¶ 39) appear to presume that all broadcast station staffs are in a constant state of flux, and that hiring is a full-time station activity. This is not the case with NRRA, nor, we suspect, is it so with many hundreds of similarly situated rural and small market stations.

NRRA employs 40 persons full-time at KRVN and 13 full-time at KNEB. The stations' staffs have remained very stable over time. KRVN has had fewer than two positions opening per year, including none in some years. Its average term of employment is 12 years. At KNEB, apart from two sales hires in 1995, the median employment term is eight years and rising. Because of the stability of its stations' staffs, NRRA does not

maintain an active “applicant pool.” It is not continuously engaged in employee hiring.

Under the “failure to recruit” criteria of proposed EEO forfeiture guidelines, NRRA would be subject to a \$12,500 forfeiture and reporting conditions if it were found to have failed to attract an “adequate pool of minority and female applicants” for just one out of two annual job openings. The proposed 66 percent benchmark may bear some realistic relationship to large market stations with high turnover, but it is thoroughly unrealistic in the stable staff environment, especially in rural and small markets.

For this reason NRRA suggests that relief be given to licensees for station staffing that has demonstrated stability. A standard for exemption is conveniently quantifiable, such as fewer than five annual hires or less than 10 percent annual turnover, averaged over an historical period, perhaps three years.

### EEO and Program Diversity

“The Commission uses an efforts-based approach to assessing EEO compliance.” O&NPRM at ¶ 7. The basic rationale underlying the efforts-based examination of employment practices is that a broadcaster “can more effectively fulfill its duty to serve the needs and interests of the entire community if it makes a good faith effort to employ qualified women and minorities.” O&NPRM at ¶ 3. Thus, “the overriding goal



underlying our EEO rules is to promote program diversity.” O&NPRM at ¶ 6.

NRRA submits that, given the Commission’s overriding goal, the ultimate success of its EEO rules must be measured with reference, at least in part, to the manner in which a broadcaster contributes to program diversity. This requires, of necessity, some form of examination of a licensee’s program service. To the extent that a licensee can demonstrate the contribution of its broadcast service to program diversity, it should be deemed to have conducted itself in a manner consistent with the overriding goal of the EEO rules.

KRVN’s broadcast mission ensures its devotion to a unique listenership, and as a consequence, contributes tangibly to program diversity. As a member-owned cooperative enterprise, NRRA was founded in order to establish a radio broadcast service operated specifically for educational services and to promote the social and economic welfare of farmers and ranchers in rural areas of Nebraska. Lexington was chosen as the community of license for KRVN because of its central location in the state, and the ability to maximize coverage to KRVN’s constituency. KRVN has broadcast from Lexington since 1951.

KNEB furthers NRRA’s program mission throughout the Nebraska Panhandle. In addition, to the extent that the greater Hispanic population in Scotts Bluff County reflects the socioeconomic integration of that population into the life of the community, KNEB’s program service has focused on the needs of the minority community. It has continuously

broadcast, since prior to its acquisition by NRRA 12 years ago, a weekly Spanish-language program block, and employs Hispanic personnel to produce and to sell advertising time in the programming. This is as it should be: the broadcaster that genuinely and in good faith attempts to ascertain and to meet its public interest responsibilities will reflect the varying needs of its audience in the station's program service. Serving the needs of the listening audience makes good business sense and makes the broadcaster a valued member of the community. NRRA believes that the principle of public service is what the Commission had in mind when it adopted EEO rules in 1968.

NRRA recognizes the Commission's reluctance to rest policy determinations upon a licensee's choice of program format, to which NRRA has two responses. First, NRRA suggests the Commission consider a licensee's program service – its essential mission to the public – rather than simply the entertainment or music format chosen to fulfill that mission. Second, the Commission's declaration that program diversity is the core goal of its EEO rules requires it to evaluate in some fashion the state of such diversity as a whole among its broadcast licensees.

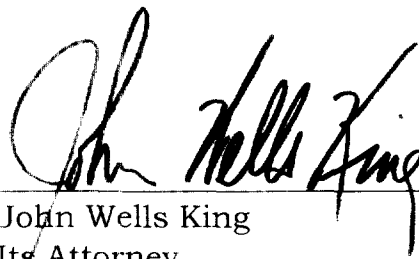
Were the Commission to adopt such a form of review, NRRA believes that KRVN and KNEB would be found to be material contributors to program diversity. The stations provide a unique program service to their listening audience, including service to a distinct minority community: the three percent of the domestic population that are farmers and ranchers.

## Conclusion

Stations in the smallest broadcast markets, particularly those in unranked markets, should be exempted from EEO recordkeeping. The presumption against alternative labor force data should be eliminated, and broadcasters should be permitted to elect the labor force criteria most appropriate to their station, its location and service area. The character of a labor force should be examined using Form 395 job classification census data, in order to determine the true potential of an applicant job pool. Staff stability should be factored into the applicant pool equation. Program mission should be taken into account in determining whether a station has complied with the Commission's EEO rules. NRRA urges the Commission to adopt appropriate modifications to its EEO policy and rules.

Respectfully submitted,

NEBRASKA RURAL RADIO ASSOCIATION

A handwritten signature in black ink, appearing to read "John Wells King", is written over a horizontal line.

John Wells King  
Its Attorney

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